FRONT Report LINE

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SUPPORTING CRIME VICTIMS
Attorney General Jay Nixon, second from left, joined Missouri officials speaking in support of crime victims during National Crime Victims' Rights Week. With him at the Capitol are from left: Gov. Mel Carnahan; Corrections Director Dora Schriro; Linda Dudgeon, director of Missouri Coalition Against Sexual Assault; Ed Stout, director of Aid for Victims of Crime in St. Louis; and Gary Kempker, director of the Public Safety Department.

POST training standards upheld

Missouri Department of Public Safety v. Steve Murr
Case No.: WD57106
Issued: Feb. 8, 2000

THE STATE APPEALS court upheld the authority of the POST Commission to require officers to have a high school diploma or its equivalent.

POST would not certify a deputy sheriff who had no diploma or GED. The deputy, who flunked the GED exam over several months, did get a "diploma" from a correspondence school not accredited by any appropriate organization.

POST refused to accept the "diploma" as an equivalent and went before the Administrative Hearing Commission. At issue was whether POST could require a diploma or its equivalent since Chapter 590 does not specify this.

The appellate court noted: "Given the far-reaching and serious implications of police action for our citizenry, it goes without saying that the State has a vested interest in insuring that law enforcement personnel, whether state, county, or municipal, have a minimal level of competence with respect to their education and training in order to carry out their required duties ...."

The AG's Office, which represented the POST Commission, supports the commission's efforts to maintain an adequate level of professionalism in the law enforcement community.

"Unqualified officers tarnish the image of all law enforcement officers," said Attorney General Jay Nixon. "Our office will continue to support the efforts of the POST Commission and the Legislature to increase the professionalism of law enforcement in this state."

Next Front Line will list approved legislation

Several law enforcement-related bills are still being debated by the Missouri General Assembly. The next issue of Front Line will list those bills passed by the Legislature and sent to the governor for signing. The session ends May 12.

You can now find Front Line on the AG's Web site: **www.ago.state.mo.us**

Click on the law enforcement link

Court: Handcuff use an unintended arrest

THE MISSOURI COURT of Appeals has ruled that the use of handcuffs to detain a suspect was a "de facto" arrest.

While the December 1999 case does not ban using handcuffs in a non-arrest situation, it reinforces that officers must have a legitimate safety or security concern before using handcuffs on a suspect not under arrest.

In *State v. Pfleiderer*, a confidential informant told police that a female suspect would be traveling with a man in a 1980s silver Cadillac on a certain date with crack cocaine. The informant provided a description of the man.

Surveillance was set up and a 1980s silver Cadillac passed by with a man of a similar description driving, but the passenger could not be identified.

The vehicle had improper plates and when the officers went to stop the car, it ran a stop sign. Thus, cause clearly existed for a stop.

PAT DOWN

The driver and the defendant, Danny Pfleiderer, were patted down and handcuffed. At least four officers were on the scene. A drug dog arrived within 15 minutes.

The dog did not "alert" on the car, but did alert on Pfleiderer. Two bags of crack cocaine were found in his crotch area.

The officers testified the defendant Pfleiderer was never under arrest and acknowledged no cause for arrest existed. The detention was a *Terry* stop to investigate whether he and the driver were involved in criminal activity.

CONTINUED DETENTION A PROBLEM

The court did not question the detention or initial handcuffing of the defendant. The continued detention of the defendant by handcuffing him, however, was deemed to be a "de facto" arrest because the police did not use "the least intrusive means of detention reasonably necessary to achieve their investigative purpose."

The handcuffs made the detention unreasonable because they were unnecessary. The officers had no reason to fear violence or weapons since they already had frisked both suspects. Also, there were at least four officers present.

CAN'T JUSTIFY HANDCUFFS

The officers' failure to articulate a need for the handcuffs made the seizure more than a *Terry* stop and converted it into an arrest, the court said.

This case does not suggest that officers can use handcuffs only when making custodial arrests. Several cases have been upheld in *Terry*-stop situations where officers used handcuffs to reduce safety concerns. But these officers were able to explain why they believed handcuffs were reasonably necessary for their protection or to secure the individual. No such explanation was provided in this case.

The use of handcuffs is usually associated with an arrest. To justify handcuffs in other situations, an officer will need to overcome that presumption by explaining to the court why handcuffs were necessary.

Case: *State of Missouri v. Danny L. Pfleiderer*
8 S.W.3d 249 (Mo. APP., W.D., 1999)
Case No.: 57254
Issued: Dec. 28, 1999

HOW TO EXPLAIN THE USE OF HANDCUFFS

In non-arrest situations, officers can use this statement to explain the use of handcuffs to a suspect:

"You are not under arrest, but I am placing these handcuffs on you temporarily for my safety and for yours. Once I have completed my investigation, I plan to remove the handcuffs."

This statement tells the suspect he is not under arrest and why handcuffs are needed. Officers still will need to justify the use of the handcuffs to a court.

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UPDATE: CASE LAW

MISSOURI SUPREME COURT

State v. Jeremy Werner

No. 81663
Mo.banc, Jan. 22, 2000

Under the totality of circumstances, the defendant was in custody under the Fifth and 14th amendments and should have been given a Miranda warning.

The 16-year-old defendant, who had an IQ of 78, was removed from school and taken to the police station for questioning. He was placed in a room and permitted to use the bathroom only under police escort.

The defendant did not voluntarily talk with police, but rather was identified by officers, removed from school, isolated from friends and family, and questioned by two detectives without receiving a Miranda warning.

There was no evidence that a 16-year-old functioning at a fourth-grade level and unfamiliar with police procedures understood that he could refuse to answer questions or leave. None of these authority figures told him he was free to leave. He was arrested after he made incriminating statements. A reasonable person in the defendant's situation would have thought himself in custody.

EASTERN DISTRICT

State v. Wesley Miller

No. 76018
Mo. App., E.D., Jan. 11, 2000

The trial court did not err in declining to suppress evidence when an application for search warrants requested a warrant to search the defendant's home and other buildings but an officer's affidavit did not mention the home.

The state did not need to prove that evidence of drug activity was at the defendant's home. Only the probability of criminal activity, not a prima facia showing, is the standard of probable cause.

Allowing for reasonable inferences, the affidavits provided probable cause to search. Considering the quantity of items the defendant was known to have purchased to make meth, it was reasonable to infer that the materials had been taken to the residence.

State v. Terry Dean Sensabaugh

No. 75404
Mo. App., E.D., Nov. 9, 1999

There was sufficient evidence for the jury to infer that the defendant was guilty of first-degree trafficking by encouraging the making of meth as an accomplice.

The defendant, who was in a mobile home where it was apparent that meth was being made, admitted he knew that the two women in the mobile home made meth. He did not respond to a knock and stood inside while police forcibly entered. He sold meth for the two women, thus providing an outlet for their manufacture.

The trial court did not commit plain error in allowing a criminalist with a college degree and training in drug analysis to testify as an expert witness that he knew the statutory definition of manufacturing meth and that in his opinion meth was being made in the mobile home.

The testimony helped the jury by clarifying that the process involved chemical extraction and synthesis, as set out in the statute, which a person without knowledge and experience would not necessarily have known.

WESTERN DISTRICT

State v. Gerren E. Jacoway

No. 56604
Mo. App., W.D., Dec. 28, 1999

The court did not err in refusing to admit evidence of the victim's blood alcohol content in a second-degree murder charge. The defendant sought to introduce evidence of the victim's BAC to prove the defendant acted under the influence of sudden passion, thus committing the crime of voluntary manslaughter. The victim's severe intoxication was uncontested.

In light of other evidence pointing to intoxication, the slight probative value of BAC could reasonably be considered cumulative. Also, the defendant failed to show that the passion was "sudden."

State v. Eric Estrator

No. 56122
Mo. App., W.D., Nov. 16, 1999

The court erred in convicting a man of forgery because the state had to prove the defendant completed writing the check and then offered it. Evidence showed he never offered the check and left the store without completing it or tearing it from his checkbook.

Evidence that the defendant entered a store, put beer on the counter with the intent to buy, partially filled out a check then quit, and left the store once told his check would not be accepted, supported submission of attempted forgery. This behavior would constitute a substantial step toward commission of a forgery.

But to get a forgery conviction, the jury had to find that he "used the check as genuine." The defendant attempted to commit forgery, but since he did not utter or offer the check, the state failed to make a submissible case that he committed forgery. The case was remanded for entry of conviction of attempted forgery.

UPDATE: CASE LAW

WESTERN DISTRICT

State v. Preston White

No. 54686

Mo. App., W.D., Jan. 11, 2000

Following the recent Missouri Supreme Court case of *State v. Withrow*, the trial court correctively instructed the jury in a charge of attempting to manufacture a controlled substance on substantial step attempt. The defendant was sentenced to a class B felony attempt under the statute.

There was no violation of double jeopardy for the defendant's charge of attempt to manufacture a controlled substance and possession of pseudo-ephedrine with intent to make meth.

Double jeopardy is not implicated because each crime has an element not contained in the other crime.

State v. Bernardo O. Costa

No. 56095

Mo. App., W.D., Nov. 30, 1999

The court did not abuse its discretion in declining to grant a mistrial when the prosecutor informed the venire panel that the judge had determined it would be too traumatizing for a child to testify and therefore her testimony would be presented on videotape.

While the statement was improper, the court sustained the objection and directed the jury to disregard. While the statement was objectionable, it did not directly tell the jury that the court found the child's testimony to be reliable. It was only one statement in voir dire and the court took immediate corrective action.

Also, the court did not abuse its discretion in declining to order a mistrial in this prosecution for statutory rape when a witness testified that the child said her dad sometimes hit her mom.

The state did not deliberately try to elicit the comment, which was singular and isolated. The comment did not refer to a specific instance and did not specify how many times the defendant allegedly hit her. The court promptly sustained the objection and instructed the jury to disregard the statement. Given the strength of the state's case, this improper comment did not play a decisive role in determining guilt.

The court also upheld the admission of the testimony of six witnesses who testified to statements made by the child under Section 491.075 although she was not present to testify at trial.

In analyzing all statements, the court used the factor set forth in *Idaho v. Wright* and *State v. Redman* that there is "an affirmative reason arising from the circumstances in which the statement[s] were made, [that] provides a basis for rebutting the presumption that a hearsay statement is not worth the reliance at trial." Stated differently, evidence showed that the time, content and circumstances of the statements provided sufficient indicia of reliability.

SOUTHERN DISTRICT

State v. Lloyd Hamilton III

No. 22562

Mo. App., S.D., Nov. 4, 1999

The trial court did not err in denying a motion to suppress and admitting seized evidence into evidence at trial because officers who executed a search warrant failed to "knock and announce" their presence.

At the suppression hearing, an officer testified that a reliable informant told him the defendant had a gun, although it might be a BB gun. The detective's investigation revealed the defendant was on parole and had an extensive criminal history, including a conviction for armed robbery.

The detective informed a special response team planning to execute the search warrant. This information would support a reasonable suspicion that the team could likely be subjected to physical danger and that the defendant might forcibly resist an attempt to enter and search.

Also, the substance for which the warrant was issued, crack cocaine, could easily be discarded in kitchen and bathroom drain pipes. Thus, there was sufficient evidence for the trial court to find that the police were justified in not knocking and announcing their presence before entering the defendant's home.

The court reversed the conviction, however, because there was insufficient evidence to show that the defendant waived a jury in open court and no waiver of a jury had been entered of record.

State v. Frank A. Pasteur III

No. 66215

Mo. App., S.D., Nov. 30, 1999

A high school band teacher was charged with endangering the welfare of a child and first-degree sexual misconduct involving two students.

The court did not abuse its discretion in allowing a victim to testify to uncharged acts of misconduct when she testified that the teacher asked if he could touch her breast "one more time."

The teacher's statement can be seen as an admission of prior misconduct and relevant to prove the charged offense. The request tended to support the victim's allegation that the defendant had touched her breast on the charged date.

The court did not abuse its discretion in submitting a verdict director based on endangering the welfare of a child by including language that the defendant "was a school teacher, and charged with care and custody of the child."

The court found that the statute includes schoolteachers and, as band teacher, he held a confidential relationship with the victim.

By his position, he was able to influence the victim not only within the

Supreme Court limits use of anonymous tips

THE U.S. SUPREME COURT unanimously held on March 29 that information from an anonymous informant, without corroboration, is not sufficient to create reasonable suspicion to stop and frisk someone for weapons.

In *J.C. v. Florida*, Miami police received an anonymous phone call warning that a young male standing near a bus stop and wearing a plaid shirt was carrying a gun. Police found the defendant matching the description. A frisk revealed a pistol.

The law is well established that an anonymous tip cannot provide "probable cause" for an arrest or warrantless search. But many cases have suggested that in some situations an anonymous informant could provide "reasonable suspicion" for a *Terry* stop. The March 29 ruling makes clear, however, that such a tip does not provide sufficient information to justify a *Terry* stop or a frisk.

Officers still can use these tips to gather facts to create reasonable suspicion for a stop. But they must corroborate the information. If the officer had seen a bulge from the pistol or if the male had fled, this may have been sufficient to justify a stop and pat down.

WARRANTED ACTION

The Supreme Court emphasized that there are serious situations in which an anonymous tip would be sufficient. Receiving a tip about a bomb or about someone armed in an airport would allow a stop and frisk. An anonymous tip about a weapon in a school also would be sufficient.

METH CONFERENCE CALL
Tim Anderson (right), head of the AG's Meth Prosecution Strike Force, Attorney General Jay Nixon (center), and Ted Ardini, chief counsel of the AG's Public Safety Division, held a conference call on April 4 with Missouri prosecutors. The prosecutors and Nixon discussed successful prosecutions and meth-fighting challenges. **The Strike Force, which is now working on 74 cases, has assisted prosecutors in 33 counties. The unit has obtained 65 convictions resulting in sentences of 340 years of prison time since its inception 20 months ago.**

Top court to review drug checkpoints

THE U.S. SUPREME COURT has agreed to review a decision by a lower federal court that ruled drug checkpoints used by the city of Indianapolis are unconstitutional.

While the U.S. Supreme Court has upheld the use of DWI roadblocks, some courts have been unwilling to permit police to conduct drug checkpoints because the public safety concerns are not as "urgent" for drug couriers as they are with drunken drivers. In *City of Indianapolis v. Edmond*, the Seventh Circuit Court of Appeals held that using roadblocks to stop all vehicles to detect drug traffickers is unconstitutional.

In *State v. Damask*, 936 S.W.2d 565, 570 (Mo.banc, 1996), the AG's Office successfully argued before the Missouri Supreme Court that drug checkpoints are constitutional and that the state's concern over drug trafficking is at least as great as its concern over drunken drivers. A federal appeals court has since upheld the use of drug checkpoints in Florida.

"Drug checkpoints are an effective tool in reducing drug trafficking," said Attorney General Jay Nixon. "More important, they involve minimal intrusion on our citizens and are one of several types of checkpoints that are constitutional."

The AG's Office will file a brief in support of Indianapolis' program, Nixon said. "We will join several other states in arguing that checkpoints, when done properly, do not unreasonably infringe on citizens' rights and that the state's interest in fighting drugs justifies these brief, limited stops. Checkpoints have proved effective in detecting drug couriers here."

The U.S. Supreme Court is not expected to rule before this fall. Meanwhile, the Missouri Supreme Court's decision authorizing drug checkpoints remains the law.

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Missouri police more often target of assaults by citizens

On average, an officer is assaulted every four hours.

STATISTICS RELEASED by the Highway Patrol for 1998 again show that the number of assaults against Missouri police officers far exceeds the number of alleged assaults by officers against citizens.

The patrol's Statistical Analysis Center each year publishes stats on assaults against officers. Here are selected stats for 1998, the most recent reporting year:

- **Assault odds:** An on-duty officer is far more likely to be assaulted than for a citizen to be assaulted or injured by an officer. Nearly one in four officers in Missouri is likely to be the victim of an assault in any year.
- **Killed on the job:** Two officers were killed — one accidentally and the other by a rifle. Since 1989, 31 officers have been killed in Missouri.
- **More assaults:** There were 2,204 assaults on officers, a 3 percent increase over 1997. Eighty percent of the assaults involved physical force and 20 percent involved a weapon.
- **Crime time:** Nearly 75 percent of the assaults occurred between 4 p.m. and 4 a.m.
- **Dangerous calls:** The greatest percentage of assaults, 28.7 percent, occurred during domestic violence calls. More than 21 percent occurred while attempting an arrest. Over half (53 percent) of the assaults occurred in the larger metropolitan police departments.

Child-abuse seminar May 31-June 2

THE MISSOURI OFFICE of Prosecution Services is sponsoring a seminar, "Prosecuting Child Abuse," in conjunction with the Virginia-based National Center for Prosecution of Child Abuse.

The training will be held at Tan-Tar-A in Osage Beach from May 31 to June 2.

The registration fee is $40 for the seminar, which is POST accredited for 14 hours. To register, call Bev Case at MOPS at 573-751-0619.